

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2003-1142

**Bureau of Commercial Services,
Petitioner**

Agency No. 85565

v

Agency: Bureau of Commercial Services

Foxy Nails

**Tammy Phuong Vu, Owner,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 4th day of December, 2003
by Carole H. Engle
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracy Hampton Yarborough, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Respondent Tammy Phuong Vu, Owner, appeared *pro se*. Marie Duong was present to translate for Respondent.

This case stems from an April 21, 2003 Formal Complaint which disclosed that Respondent, doing business as Foxy Nails, is licensed to perform cosmetological services under the Occupational Code, 1980 PA 288, as amended, MCL 339.101 *et seq.* (Code). The Complaint alleges that a February 26, 2003 inspection of Respondent's business found various violations of the Code and rules promulgated thereunder. The hearing in this matter was held as scheduled on October 10, 2003. At the hearing Respondent admitted that the

allegations in the Complaint were true and accurate with the exception of paragraph 2. C. of the Complaint which alleges that Respondent failed to ensure that after sanitation, the equipment, tools and supplies were put in a dry sanitizer, closed cabinet or drawer or covered container. Counsel for Petitioner dismissed paragraph 2.C. of the Complaint.

ISSUES AND APPLICABLE LAW

The issues in this case are whether Respondent violated the following sections of the Code and the rules promulgated thereunder: Section 604(c), 1979 AC, R 338.2128; and 1999 MR11, R 338.2176(1)(b). These code sections and rules state in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

* * *

(c) Violates a rule of conduct of an occupation.

* * *

Rule 28. A salon or school owner shall not employ or otherwise use an unlicensed person to perform cosmetological services or to teach cosmetology.

Rule 76. (1) The licensee or owner of an establishment or school shall keep all equipment, tools, implements, and supplies, including all of the following, clean and sanitary at all times, and of the equipment, tools implements, or supplies are intended for use on more than 1 patron, then the licensee or owner shall sanitize the equipment, tools, implements or supplies pursuant to rules promulgated by the department:

* * *

(b) Brushes

FINDINGS OF FACT

1. Respondent, Tammy Phuong Vu, is licensed to provide cosmetological services under the Code.
2. On February 26, 2003, an inspection of Respondent's business premises was conducted by one of Petitioner's investigators.
3. The inspection of Respondent's premises found:
 - A. Respondent used unlicensed persons to perform cosmetological services.
 - B. Respondent failed to keep brushes clean and sanitary at all times.
 - C. Respondent has violated a rule of conduct in practicing an occupation.

CONCLUSIONS OF LAW

Based upon Respondent's admissions, and as reflected in the findings of fact, I find that Petitioner has established by a preponderance of the evidence that Respondent violated Section 604(c), of the Code as well as Rules 338.2128 and 338.2176(1)(b).

RECOMMENDATIONS

I recommend the imposition of a \$500.00 fine upon Respondent. If the fine is

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not paid within 60 days of the mailing of the Final Order, I recommend suspension of the license.

Carole H. Engle
Administrative Law Judge